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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

R.Q.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA
BARBARA COUNTY,

Respondent;

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Real Party in Interest.

2d Civil No. B223906
(Super. Ct. No. J-1317413)
(Santa Barbara County)

Petitioner R.Q. is the mother of A.A. and five older children. Shortly after A.A. was born, the Santa Barbara County Child Welfare Services (CWS) detained her. The juvenile court bypassed reunification services pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(10).¹ Petitioner

¹ All statutory references are to the Welfare and Institutions Code unless otherwise stated.

seeks extraordinary writ review of the juvenile court's order setting a hearing to determine a permanent plan for A.A. (§ 366.26.)

Petitioner contends that there was insufficient evidence to support the court's determination that she did not make reasonable efforts to deal with the domestic violence problem that led to removal of her older children.² (§ 361.5, subd. (b)(10).) We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

In 2005, before A.A. was born, four of petitioner's children were detained because of petitioner's substance abuse, her criminal history and because of domestic violence between petitioner and Roberto A., the father of two of the children. Petitioner was provided with reunifications services but did not complete her case plan, did not maintain sobriety, and was incarcerated for probation violations. In 2007, the court terminated services as to all four children.

After services were terminated, petitioner participated in treatment, therapy and anger management classes, maintained sobriety for over two years, and graduated from a Proposition 36 program. One of her criminal cases was dismissed and she remained on informal probation for another.

CWS returned one child, 13-year-old Richard, to petitioner's care in a program of family maintenance in September 2008.³ The younger three children remained in foster care and received permanency planning services.

Petitioner renewed her relationship with Roberto but did not disclose that to CWS. In January and March of 2009, while her son Richard was living with her, petitioner was involved in two additional incidents of domestic violence with Roberto. In January, she told the responding officer that Roberto grabbed her

² Abriella is petitioner's sixth child. Petitioner's oldest child is not a dependent.

³ Richard's father was not Roberto. Services had been terminated as to Richard's father.

hair, took the battery out of her phone and knocked her to the ground, and that she swung her elbow at him and threw a cup of yogurt and a spoon at him. She told the officer that there had been more incidents of domestic violence between them than she could count over a period of 11 years, but she refused an emergency protective order. She did not report the incident to her social worker. When the social worker learned about it and confronted her, petitioner initially lied and denied that it occurred.

During the March incident, Roberto and petitioner fought physically and Roberto shoved Richard out of the way, according to Richard's statement to a CWS worker. Petitioner reported the March incident to her social worker, but she minimized it and did not disclose that her son Richard had been present and shoved. Roberto was prosecuted for corporal injury to a cohabitant as a result of the March incident. An emergency protective order was issued, but petitioner appeared in court nine days later to ask that it be lifted. She told her social worker that she would request a permanent restraining order against Roberto, but she did not follow through. Petitioner was, by now, pregnant with A.A.

In September 2009, in Richard's case, petitioner agreed to comply with orders that prohibited contact between herself and Roberto and contact between Roberto and Richard. She also began domestic violence counseling. She told the domestic violence counselor that she and Roberto had only yelled at each other. She did not mention any history of physical violence between them and she did not tell the counselor that there was a no contact order against Roberto. Petitioner told the counselor that her relationship with Roberto created problems with CWS, but she never expressed any other concerns about Roberto having contact with her children. The counselor never received any police reports and relied on petitioner's statements.

In September and October 2009, petitioner missed four drug tests and tested positive once for amphetamine. The positive test was on October 20,

less than three weeks before A.A. was born. Petitioner challenged the positive test result and it was confirmed by a laboratory. In December, she admitted to a social worker that she had taken someone else's Adderall in order to get high. She later testified that she had taken Tylenol with codeine before she took the Adderall and that she knew Adderall was an upper.

In October, the criminal court granted petitioner's request to lift the no contact order so that Roberto could attend the birth of his daughter, A.A. Petitioner testified that she told CWS the order had been lifted, but nothing in CWS's records indicates it was so informed.

A.A. was born and detained in November 2009. CWS detained her based on the continuing domestic violence between petitioner and Roberto, and based on petitioner's drug abuse, her criminal history and her CWS history of removal of four children. A.A.'s visitation scheduled allowed petitioner to visit her three times a day for breastfeeding and allowed Roberto to visit her at separate times so they would have no contact.

CWS initially recommended that petitioner receive reunification services for A.A. but it revised that recommendation after several events in December 2009. On December 18, petitioner and Roberto got into a verbal argument in A.A.'s presence when they visited her at the same time, in violation of the visitation schedule. Petitioner did not mention this incident to her domestic violence counselor. On December 19 and 20, petitioner missed scheduled visits with A.A. Over the holidays, petitioner had some hostile communications with CWS workers when she was unable to get approval to miss six or seven days of her program and drug tests in order to take Richard out of town. In these conversations, she misrepresented that Richard's worker had approved the trip. Petitioner's plan had been to take Richard to the home of Roberto's father, a home that had previously been determined unsuitable for Richard. She did take Richard

out of town over New Year's and left him either with his father or with an aunt and uncle, neither of which was approved, while she returned for her program.

CWS filed an amended report in which it recommended that services be bypassed for A.A. based on petitioner's failure to address her substance abuse problem (§ 361.5, subd. (e)(1)) and failure to treat the domestic violence problem that led to removal of four children. (§ 361.5, subd. (b)(10)) At about the same time, in Richard's case, another CWS worker reported progress and recommended that his dependency case be dismissed and family services be terminated.

At a joint contested hearing for this case and for Richard's case in April 2010, the court heard the testimony of petitioner, her past and current drug counselors, her domestic violence counselor, and Richard's social worker. Petitioner had been in drug treatment since the end of November 2009 and had made progress. She had missed eight additional visits with A.A. and had left four visits early.

Petitioner testified that she was no longer involved with Roberto, but could only give equivocal assurance about the future: "I can't say how they can be totally sure, nothing's for sure, but I'm saying to you guys right now, I don't have no involvement with him no more." She testified that Roberto is "unhealthy for myself and my children and very unstable mentally," but she continued to describe the domestic violence between them as "verbal."

Richard's social worker testified that petitioner was meeting Richard's needs, but she also testified that petitioner had not been candid about physical violence with Roberto and that petitioner had left Richard at Roberto's home in December 2009 for about five days, notwithstanding a no contact order between Roberto and Richard. Petitioner testified that she did not leave Richard with his father, but that she left him with an aunt and uncle.

With respect to A.A., the court ordered services bypassed. The court found that petitioner had made reasonable efforts to treat her substance abuse

problems, but had not made reasonable efforts to treat the domestic violence problem that led to removal of her other children. The court expressed concern with petitioner's "lack of candor," and her inability to understand "that the child is put in danger when they are together with this child." The court observed that, "She's taken domestic violence courses, but does not seem to understand, as to [Roberto], that the child is put in danger when they are together with this child. She doesn't seem to get that." The court set A.A.'s case for a section 366.26 hearing on August 9, 2010. With respect to Richard, the court rejected the department's recommendation to dismiss the petition and instead ordered that family maintenance services continue.

Mother filed this petition for an extraordinary writ directing the court vacate its order setting the section 366.26 hearing and to order reunification services for A.A. On July 23, 2010, we denied petitioner's request to stay the section 366.26 hearing because no exceptional circumstances were shown. (Cal. Rules of Court, rule 8.452(f).)

DISCUSSION

There is a presumption in dependency cases that a parent will receive reunification services (§ 361.5, subd. (a)), but reunification services need not be provided to a parent if the court finds by clear and convincing evidence that (1) reunification services were terminated for any sibling of the child because the parent failed to reunify with the child after removal and (2) the parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling. (§ 361.5, subd. (b)(10).)

We review the juvenile court's determination for substantial evidence. We must draw all reasonable inferences in support of the juvenile court's findings and view the record in the light most favorable to the juvenile court's order. (*In re Maria S.* (2000) 82 Cal.App.4th 1032, 1039.)

Here, substantial evidence supports the juvenile court's determination by clear and convincing evidence that petitioner did not make a reasonable effort to treat the domestic violence problem that led to removal of A.A.'s siblings. It is undisputed that reunification services were terminated for A.A.'s siblings and that petitioner's problem with domestic violence (and substance abuse) led to their removal. The police reports and the testimony of petitioner and her domestic violence counselor provided substantial evidence that petitioner did not make reasonable efforts to treat the domestic violence problem. She never acknowledged that she and Roberto were physically violent or that their relationship endangered her children. She was not forthcoming with her social worker, her son's social worker, or her domestic violence counselor about her continuing contact with Roberto or about the violence between them in January and March of 2009 and she minimized the December 2009 incident.

Petitioner argues that the juvenile court should have found that she made reasonable efforts because CWS initially reported that it was satisfied with her progress and allowed her to keep Richard, and because the criminal court indicated Roberto was no longer a threat when it lifted the no contact order. We are not persuaded. The criminal court maintained a no contact order for seven months before it lifted the order to permit Roberto to attend his daughter's birth. Petitioner and Roberto were fighting again within a month, as evidenced by their altercation on December 18. The fact that petitioner did not bring this to the criminal court's attention does not support her cause. Although CWS initially reported satisfactory progress, it did so before the December fight and based on the recommendation of a domestic violence counselor who had been misled by petitioner. Although CWS recommended that Richard's case be dismissed, the court rejected that recommendation. Richard was allowed to remain in petitioner's home, but he was not as vulnerable to domestic violence as A.A., an infant. The CWS worker recommended that Richard remain with his mother based on her

belief that, because of Richard's "age and intuitiveness, . . . if he was ever at any risk in any instance he would be in a position to stand up for himself and advocate for his needs, if and when necessary."

DISPOSITION

The petition is denied.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

YEGAN, Acting P.J.

PERREN, J.

James E. Herman, Judge

Superior Court County of Santa Barbara

Richard R. Martinez, for Petitioner.

No appearance for Respondent

Dennis A. Marshall, County Counsel. Toni Lorien, Deputy, Sarah A.
McElhinney, Deputy, for Real Party in Interest.